

FAC 90-34

BEFORE vs. AFTER

PART 23

ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

[NOTE: THIS IS AN ALL NEW SUBPART]

SUBPART 23.9 —TOXIC CHEMICAL RELEASE REPORTING

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23.901 Purpose.

This subpart implements the requirements of Executive Order (E.O.) 12969 of August 8, 1995, Federal Acquisition and Community Right-to-Know.

23.902 General.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act of 1990 (PPA) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released by manufacturing facilities into the air, land and water in its communities.

Under the EPCRA, section 313 (42 U.S.C. 11023), and the PPA, section 6607 (42 U.S.C. 13106), manufacturers are required to submit annual reports on toxic chemical releases and waste management activities to the Environmental Protection Agency (EPA) and the States.

23.903 Applicability.

(a) This subpart applies to all competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts.

(b) This subpart does not apply to—

(1) Acquisitions of commercial items under FAR part 12; or

(2) Contractor facilities located outside the United States. (The United States, as used in this subpart, includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.)

23.904 Definition.

Toxic chemicals means reportable chemicals currently listed and added pursuant to EPCRA sections 313 (c), (d), and (e), except for those chemicals deleted by EPA using the statutory criteria of EPCRA, sections 313 (d) and (e).

23.905 Policy.

(a) It is the policy of the Government to purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment.

(b) Federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

23.906 Requirements.

(a) E.O. 12969 requires that solicitations for competitive contracts expected to exceed \$100,000 include, to the maximum extent practicable, as an award eligibility criterion, a certification by the offeror that either—

(1) If awarded a contract, facilities it owns or operates to be used in the performance of the contract will file, and will continue to file throughout the life of the contract, a Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313 (a) and (g) and the PPA section 6607; or

(2) Such facilities are otherwise exempt from the filing and reporting requirements.

(b) A determination that it is not practicable to include the solicitation provision at FAR 52.223–13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement official at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of \$500,000 (including all options), the agency shall consult with EPA.

(c) Award shall not be made to offerors who do not certify in accordance with paragraph (a) of this section when the provision at FAR 52.223–13, Certification of Toxic Chemical Release Reporting, is included in the solicitation.

(d) The contracting officer shall cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities under E.O. 12969.

(e) EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the head of the contracting activity that the contract be terminated for convenience. The head of the contracting activity shall consider the EPA recommendation and determine if termination or some other action is appropriate.

23.907 Solicitation provision and contract clause.

Except for acquisitions of commercial items made under part 12, the contracting officer shall:

(a) Insert the provision at 52.223–13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts, unless it has been determined that it is not practicable in accordance with 23.906(b); and

(b) When the solicitation contains the provision at 52.223–13, Certification of Toxic Chemical Release Reporting, insert the clause at 52.223–14, Toxic Chemical Release Reporting, in the resulting contract, if the contract is expected to exceed \$100,000 (including all options).

52.223-13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.907(a), insert the following provision:

CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)

(a) The offeror, by signing this offer, certifies that—

(Note: The offeror must check the appropriate box(es).)

(1) To the best of its knowledge and belief, it is not subject to the filing and reporting requirements described in Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) sections 313(a) and (g) and Pollution Prevention Act of 1990 (PPA) section 6607 because none of its owned or operated facilities to be used in the performance of this contract currently—

(i) Manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c).

(ii) Have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A).

(iii) Meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA).

(iv) Fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102.

(2) If awarded a contract resulting from this solicitation, its owned or operated facilities to be used in the performance of this contract, unless otherwise exempt, will file and continue to file for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313(a) and (g) and PPA section 6607 (42 U.S.C. 13106).

(b) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995 (60 FR 40989-40992).

(End of provision)

52.223-14 Toxic Chemical Release Reporting.

As prescribed in 23.907(b), insert the following clause:

TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)

(a) Unless otherwise exempt, the Contractor owned or operated facilities used in the performance of this contract shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023 (a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). Such Contractor facilities shall file the annual Form R throughout the life of the contract.

(b) A Contractor is exempt from the requirement to file an annual Form R if none of the Contractor owned or operated facilities used in the performance of this contract—

(1) Manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) Have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) Meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA); or

(4) Fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR 19.102.

(c) If the Contractor has certified to be exempt in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any one of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor owned and operated facilities used in the performance of this contract, unless otherwise exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the Contractor becomes eligible; and (ii) continue to file the annual Form R for the life of the contract.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 12, the Contractor shall—

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), with subcontractors having SIC designations of major groups 20 through 39 as set forth in FAR 19.102, the substance of this clause, except this paragraph (e).

(End of clause)